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Minutes of the Commission Meeting Held on February 5, 2009 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

Commissioners: (P = Present; A = Appointed; E = Elected)

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| - James Athearn (E – Edgartown) | P Ned Orleans (A – Tisbury) |
| P Bill Bennett (A- Chilmark) | P Jim Powell (A – West Tisbury) |
| P John Breckenridge (A – Oak Bluffs) | P Camille Rose (A - Aquinnah) |
| P Christina Brown (E - Edgartown) | P Doug Sederholm (E – Chilmark) |
| P Peter Cabana (A – Tisbury) | P Casey Sharpe (A – Oak Bluffs) |
| - Martin Crane (A – Governor Appointee) | P Linda Sibley (E – West Tisbury) |
| P Carlene Gatting (County Appointee) | P Holly Stephenson (E – Tisbury) |
| P Chris Murphy (A – Chilmark) | - Andrew Woodruff (E – West Tisbury) |
| P Katherine Newman (A –Aquinnah) | |

Staff: Mark London (Executive Director), Paul Foley (DRI Analyst/Planner), Christine Flynn (Economic Development & Affordable Housing), Jeff Wooden (Administrator), Jo-Ann Taylor (Coastal Planner/DCPC Coordinator)

The meeting was called to order at 7:30 p.m.

Christina Brown welcomed three new members of the Commission, appointed by their respective boards of selectmen: Camille Rose, Aquinnah; Bill Bennett, Chilmark; and Casey Sharpe, Oak Bluffs.

1. BUDGET

Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, C. Sharpe, L. Sibley, H. Stephenson.

Christina Brown presented information on the FY2010 operating budget.

- The MVC budgeting process started before it was clear what the impact would be of the economic situation and local aid cuts.
- Two weeks ago, the Commission adopted a budget but did not certify it or send it to the Towns until it had been reviewed again. That version had a 0.9% increase in town assessments.
- The Finance Committee has reviewed the situation, and now unanimously recommends that the Commission adopt the revised budget dated February 5th, certify it, and send it to towns.

- In the revised budget, town assessments are level-funded. It includes a couple of adjustments, including one to the overall payroll package, and a lowering of some of the operating expenses.
- The Finance Committee is not proposing changes to the payroll at this time, but suggests that this be looked at again in the spring, after it is clearer what the towns will be doing.
- The bottom line is \$1,161,490, a 9.4% decrease from last year.
- Commissioners are reminded that the budget includes a decrease in estimated legal costs, but those costs are unpredictable.

Linda Sibley moved, and it was duly seconded, to adopt and certify the proposed budget. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.

2. MUCKERHEIDE HOUSING: DRI NO. 615 – PUBLIC HEARING (CONT.)

Commissioners present: J. Breckenridge, C. Brown, P. Cabana, C. Murphy, J. Powell, K. Newman, N. Orleans, D. Sederholm, L. Sibley

Linda Sibley reopened the public hearing to accept written testimony and then closed the public hearing without taking oral testimony.

A post hearing LUPC review will be held on Monday, February 9. Deliberation and decision is scheduled for Thursday, February 12.

3. MINUTES

Commissioner present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Gatting, C. Murphy, J. Powell K. Newman, N. Orleans, C. Rose, D. Sederholm, C. Sharpe, L. Sibley, H. Stephenson.

Chris Murphy moved, and it was duly seconded, to approve the minutes of June 5th, June 12th, June 19th, and June 26th in substance as presented. In favor: 9. Opposed: 0 Abstentions: 5. The motion passed.

4. EXECUTIVE DIRECTOR'S REPORT

Mark London reported that the Island Plan Steering Committee has started working on a document summarizing its efforts. Some of the implementation of the plan may involve the Commission and the Checklist. We will schedule a meeting with the Commission, so Island Plan representatives can begin discussing proposals with the Commission.

5. BRADLEY SQUARE NO: DRI NO. 612M – PUBLIC HEARING

Commissioner present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Gatting, C. Murphy, J. Powell K. Newman, N. Orleans, C. Rose, D. Sederholm, C. Sharpe, L. Sibley, H. Stephenson

For the applicant: Richard Leonard (Chair, Island Housing Trust); Philippe Jordi (Executive Director, Island Housing Trust), Matthew Kramer (Hutker Architects)

Linda Sibley opened the public hearing on the proposed modification of the Bradley Square project. She explained that some correspondence has requested that Commissioners deny the proposal altogether. The Commission can't undo its original decision. Commissioners will discuss the benefits and detriments of the modification.

3.1 Staff Report

Paul Foley gave the staff report

- The original proposal was for two lots. This proposal is for one 18,730 sq. ft. lot.
- The overall proposal after the proposed modification is to renovate an existing building, with a meeting room, residential unit, and office; to build Bradley One with five residential units and one commercial unit; and to build Bradley Two with four residential units. There will be two live/work spaces in Bradley One.
- The proposal is for 13 bedrooms, a 920 sq. ft. market rate commercial unit, one office, and a 710 sq. ft. meeting room. Part of the lot is zoned commercial.
- Three of the ten units would count toward the stock of affordable housing for 40 B calculations.
- The Denniston Building will stay in the same location, with a basement added and the small back addition removed.
- The location of Bradley Two is changed, to be on the empty land next to the Denniston Building.
- The height of the new buildings is reduced from three to two stories.
- The total proposed floor space of Bradley One is reduced by 1,000 sq. feet. The total footprint of the two buildings is larger.
- The service road has been eliminated and two parking lots have been added, each with a curb cut.
- 70% of the 18,730 sq. ft. lot will be covered with buildings and parking lot. The original proposal had 50% covered.
- The maximum size of events was limited by the Zoning Board of Appeals to 30 people.
- The modified proposal has twenty on-site parking spaces.
- Issues to be considered are whether the benefit of the height reduction by 4 feet is offset by the footprint expansion; whether more street trees can be saved; how the modification impacts mass and scale.
- Currently the property has 28 trees. The plan has been to cut all but six, but there may be new information.
- The commercial unit on Dukes County Avenue may impact parking.
- Each of the three buildings will have its own trash bin.
- The stormwater drainage has to be revised and should be submitted to LUPC before final approval. It will be difficult to deal with runoff only with vegetation.
- There are two new curbcuts.
- There are 20 parking spaces on site, as required by the ZBA, 9 more than the approved proposal. Staff estimates a projected need for 29 to 38 parking spaces. Zoning specifically requires 19 spaces, not including for residential units. Historically the ZBA has required one per each residential unit bringing total estimate to 29. The earlier traffic study had recommended more.

- The floor to area ratio is 0.5.
- Bradley One is 76 feet long on an 80 foot long lot.
- The Tree Warden has purview of trees twenty feet from the street. If a tree has to be saved, no digging can take place within fifteen feet of it.

3.2 Applicants' Presentation

Richard Leonard explained the proposed modification.

- In September, they reached agreement with the Oak Bluffs Concerned Citizens Committee to form a group to discuss possible modifications.
- At the end of a two month process they'd had seven meetings, with regular participation, and professionally facilitated. The committee had representation by the applicants, the Oak Bluffs Concerned Citizens Committee, local residents, the NAACP, the Oak Bluffs Historical Commission, and gallery owners.
- They came together with a design fully endorsed by the joint committee.
- The plan increased on-site parking, eliminated the service road, lowered the height, reduced the combined square footage, and thereby the massing.
- The number of residential units has been reduced but the units are serving the same number of people.
- The affordability of all the units was retained.
- Commercial space was restricted to the commercial zone.
- Denniston is being kept in the same location as central to the property. The NAACP office is retained. The number of people using the meeting spaces is limited.
- The meetings were very productive. They are bringing forth a plan that they believe is well-supported as evidenced by the support in the CPA vote.

Philippe Jordi said that the impacts of the modified project are reduced or similar to those of the approved project.

- The building area is 1000 sq. feet less in size. Residential area is about 700 sq. ft. less. Commercial area is 286 sq. ft. more. The non-profit area gains 19 sq. ft.
- The height of the new buildings is 4 feet less.
- There is one fewer residential unit. Two units are live/work units, not designated for artists.
- There will be one fewer bedroom and one fewer affordable unit. There will be one more affordable bedroom.
- The local preference is the same.
- There will be three market-rate units.
- There will be twenty on-site parking spaces, with two fewer on the street.
- They'll attempt to keep the two trees on the sidewalk but they may have to cut them.
- The 6-foot high wood fencing is retained.
- The commercial use in the R1 district has been reduced by 294 sq. ft.
- The budget is about the same.
- Oak Bluffs has an approximate \$42,000 shortfall from building permit revenues. Oak Bluffs has about 190 fewer permits this year which is about 347 fewer construction jobs. This project will generate 80 to 100 construction jobs and about \$121,000 in taxes.

- The planners have worked hard to maintain an open and transparent planning process.
- They continue to make changes and are grateful for everyone's time. He hopes the Commission can expedite the approval of modifications.

Doug Sederholm asked how they'll deal with the Tree 52, in light of the Tree Warden's letter; he asked whether the applicants can build the building that's proposed if they can't excavate within 15 feet of Tree 52. **Matt Kramer** said currently the building is within 15 feet of the tree, but it may be possible to make some changes in construction techniques; the intent isn't to bypass the recommendation, but to be careful when they excavate.

Matt Kramer reviewed elevations.

- The elevation has been dropped by 4 feet and the ridge has been dropped 8 feet. They've added 12.5 feet to both sides.
- The biggest change is at the rear of each of the Bradley buildings from which the secondary staircases have been removed. There is no third floor. On Bradley Two, the square volumes on the sides were moved and added as gables.

Mark London outlined the offers.

- The offers are basically the same as in the original approval. Some of the conditions have been incorporated as offers.
- Section 1.2 and 2: Commercial uses are new.
- Section 2.1: Local preferences have been changed to 140%.
- Section 2.3: Change to maximum occupancy of 30 people.
- Section 3.2: At least one on site parking space per unit.
- Section 4.4 is new.

3.3 Public Officials

Joseph DeBettencourt, Oak Bluffs Tree Warden, explained the tree-related issues.

- On the first set of plans, the building was moved to protect Tree 52. In this plan, the building is closer to the tree and will kill the tree. Removing that tree for a building would be a crying shame. It provides a huge amount of shade for the road.
- The Selectmen can't supersede his decision.
- The plan needs to be looked at again. The sidewalk has to be pervious.
- Tree 52 could become in excellent health with a little pruning.
- Tree 36 is in pretty good shape and it would be great to save that, too.
- He's asking for five trees to be saved.
- He was surprised that the building plan had moved over after he'd discussed saving Tree 52.

There was a discussion of trees.

- **Doug Sederholm** asked if he would recommend that the Commission condition the project that Tree 52 stay.
- **Joseph DeBettencourt** said he would make that recommendation.
- **Linda Sibley** wondered if the protrusion off the back of the building could be removed and the building could be set back further.

- **Matt Kramer** said they could look at it; LUPC recommended that they shrink the area of the parking lot from 21 to 18 feet and this might be a way to move the building back, however, moving the building back would impact another tree.
- **Joseph DeBettencourt** said he would choose Tree 52 because it's a public shade tree that entirely overhangs Dukes County Avenue.

Linda Sibley asked whether the traffic expert had looked at the traffic flow.

3.4 Public Comment

Candace Nichols, abutter, listed her concerns.

- She was assured there would be no kitchen in the Denniston Building.
- The Dukes County Avenue Business District line isn't necessarily a straight line.
- Regarding scale comparisons, Mr. Muckerheide's project is one building on one lot. Bradley Square is three buildings on one lot.
- During meetings with Oak Bluffs Concerned Citizens, the members dwindled as adequate on-site parking needs weren't addressed.
- The agreement that was reached was that the Denniston House would be regulated as a benign museum with only two meetings at night with no more than 30 people and no catered events and no outside tented events. The Island Housing Trust reneged. They expanded the residential and commercial use, took away green space, and compromised trees.
- The project would be better with two buildings, rather than three.
- The real estate tax revenue may not be accurate. Values are down 30%. It is customary for most towns to give a reduced rate for reduced level AMIs.
- This is a bad project. It's too big. Denniston should be limited to a benign museum open to the public 9:00 to 5:00, with the meeting house limited to two meetings a week with no more than thirty people.
- This proposal isn't better than it was before. There are a couple of better things. She wouldn't be working against it if they had stuck to the agreement. If there were the conditions that had been agreed to, she'd say it was better.

Ron Mechor Nashawena Park, commented on the project.

- The applicant has agreed to a joint traffic study. A great effort has made to accommodate traffic on site.
- This project is full of great intentions, but it's for almost total coverage. It's creating an urban square. The neighborhood is made up of quaint summer cottages. This plan doesn't tone it down enough. The modifications are worse. There's too much going on.
- There is a way of curing this. That second Denniston Building could be removed or cut in half. This was raised three months ago.
- The Commission should condition the approval for removing one building or cutting it in half.

Don Lambert spoke in support of Candy Nichols and Ron Mechor's statements.

- After the compromise, what they thought was going to happen didn't happen. The project is still too big. It's huge. It's too much of a good thing.

- Duke's County Avenue is a feeder street going through to the older neighborhoods. There are three or four generations living in this area and this project will affect their lifestyle if it's too big.
- The parking and traffic issue is the big elephant.
- If the project were cut down, the impact wouldn't be so great and it would gather support.

Doug Sederholm asked for verification of the modifications.

- The project doubles off-street parking, the footprint is bigger, and the residential square footage is smaller.
- Use of the meeting space is limited to 30 people; before it was limited to 74.
- There are no outside events.
- The project lost open space, but gained parking spaces.

Holly Alaimo spoke about the project.

- Three people have spoken against the project but all the changes have been made to appease the people who have been heard.
- The people against the project have had their concerns addressed.
- The project needs to get started and the neighborhood wants to get this started.

Jo Jo Lambert said the reason that people are speaking about the project is that the Commission didn't listen to the public in the beginning and it approved the project. People in Oak Bluffs need some sort of compromise.

Linda Sibley explained that the Commission has legal constraints on what it can do with a modification. People may believe that the Commission made a bad judgment, but it did have four public hearings at which people were able to speak about the project. The question is whether these modifications are an improvement.

Steve Auerbach commented on the project.

- He sees a lot of building and parking lot.
- He generally supports the project. The point of everyone meeting was to work out a compromise. It looks like people met and worked out a compromise on parking and on the use of the Denniston Center.
- One question that remains is whether trees can be planted in the parking area.

Yan Meerson, commented on the project and the process.

- He was part of the committee that negotiated with the housing people.
- The Oak Bluffs Concerned Citizens Committee hasn't reconvened since November. The opinions are of individuals. As a group they did not discuss the project or send letters.
- As far as the process is concerned, they talked to a lot of people and made a list.
- Parking was the biggest concern by far. He agrees that the project was nicer with the green space, but if the project needs parking, they should include parking.
- He doesn't see how this isn't better. If you listened to people, parking was on the top of the list. The usage of the Denniston was another very big issue. The original agreement was for 70 people with outside events. The housing people accepted that concern and limited attendees to 30, without outside events.

- As part of that committee, he can say it is better than what it was. In the absolute, is it too big. If we could get rid of one building, that should be the decision of the whole community, but that isn't going to happen.

David Wilson, attended fourteen hours of meetings. He thanked the members of the community and commented on the project.

- Many supporters of Bradley don't like parking lots. But that extra space is there because it's what was requested.
- One objection was having affordable studio space subsidized for only one kind of business. That preference was eliminated.
- The driveway is gone.
- It's a better plan considering the objections that have been raised by abutters and neighbors. It's not his perfect plan, but he supports it thoroughly.

Don Lambert read a document on the revised Bradley Square proposal.

- Usage of the common green space is gone.
- The NAACP will require an office and will occasionally require meeting space in the sanctuary.
- The sanctuary will become a museum to be confirmed and occasionally be used as a meeting room.
- The use of the meeting room will be restricted as follows: open during business hours, plus two evening meetings a week. Never more than thirty people. No meetings during arts strolls or major Oak Bluffs events.
- He added that there are three or four public meeting spaces in Oak Bluffs. There seems to be no reason to expand these building to accommodate these meetings.
- Traffic, usage, and amount of building are the issues.

Candace Nichols said the document was prepared by Island Housing Trust. The note that says "to be confirmed" was added by the Island Housing Trust. It's a better project if it conforms to what we agreed to. She feels she's been duped.

Doug Sederholm says he appreciates that there was a lengthy negotiation, but Commissioners need to focus on whether the proposal is better or worse than the previous proposal.

Judy Schubert, member of the joint committee, commented on the modification.

- Part of the reason for the changes is that Island Housing Trust wanted to make the project more palatable to the neighborhood.
- The modifications are about compromise.
- This project is about growth.
- She likes it better. It's a better design. It's smart growth, it's affordable housing, it's preservation of Denniston, and it's using B1 space smartly.
- The telling thing is that when the project was brought back to the Town, the Town voted strongly not to rescind the CPA money.

Phyllis Jampol said it's been a long process. She's totally in support of the project. She believes in affordable housing. She's not crazy about the parking lot, but for the sake of compromise, then that's what it has to be.

Ron Mechur added comments about smart growth and traffic.

- There was a lot of talk about traffic. There is a lot of spillover traffic into the neighborhood. The buildings are still generating traffic. He suggested working with the applicant to scale back the project.
- Doug Foy created the smart growth term which was used for urban planning projects and transportation.
- This is a great project, but it's just too much. We're hoping that the applicants can meet with LUPC to make some revisions.
- The Commission has a second chance.

Holly Alaimo added that this is an in-town neighborhood. There's no reason to assume that people who live there will be driving and creating traffic.

3.4 Commissioner Questions

The following issues were clarified:

- Offer 9.1 is that there shall be no more two evening meetings each week and they'll have no more than thirty participants per activity.
- There can be meetings during the day of no more than thirty.
- The ZBA can further restrict the project.
- There is no outside amplification.

Linda Sibley closed the public hearing.

There will be LUPC review on Tuesday, Feb. 17th at 5:30 p.m. Deliberation and decision will be on Feb. 19th.

4. ISLAND ROADS SPECIAL WAYS DCPC: DUNHAM'S FIELD PATH, QUENOMICA ROAD, SWIMMING PLACE PATH

Commissioner present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Gatting, C. Murphy, J. Powell K. Newman, N. Orleans, C. Rose, D. Sederholm, C. Sharpe, L. Sibley, H. Stephenson

For the applicant: Alison Cannon, Edgartown Planning Board

Christina Brown explained the proposal.

- Edgartown Planning Board is proposing adding some ways to the DCPC that covers a number of the old roads that are primarily walking paths.
- The DCPC limits abutters' ability to block off the ways.
- The DCPC designation doesn't give any walking rights where those rights don't already exist.

Allison Cannon, Edgartown Planning Board, explained that there are quite a few paths that Edgartown would like to designate. The proposal tonight is for the ones that are most important and the least controversial.

- These particular paths are fairly straightforward.
- The designation and protection was started in an attempt to prevent dumping. Groups now patrol the paths and pick up trash.
- They didn't designate Skipping School Path.

JoAnn Taylor explained that an affirmative vote means that the Commission is convinced that there's enough merit in the nomination to consider the paths for designation.

- An affirmative vote would mean that a public hearing and vote on the designation would be held within 60 days.
- An affirmative vote would institute a development moratorium which would mean no permits would be issued for development within twenty feet of the paths' centerline.
- The paths being nominated are Dunham's Field Path, Quenomica Road, and a portion of Swimming Place Path. Part of Quenomica Road is already routinely traveled as noted in the nomination.

Doug Sederholm moved, and it was duly seconded, to accept the nominated ways for consideration for designation in the Special Ways zone of the Island Road District, having found reason for consideration in the interest of promoting trails for health, cultural and historic value, and recreation, as highly valued parts of the community's trail network. A roll call vote was taken. In favor: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Gatting, C. Murphy, K. Newman, N. Orleans, J. Powell, C. Rose, D. Sederholm, C. Sharpe, L. Sibley, H. Stephenson. Opposed: None. Abstentions: None. The motion passed.

A public hearing will be held March 19th.

5. MINUTES

Commissioner present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Gatting, C. Murphy, J. Powell, K. Newman, N. Orleans, C. Rose, D. Sederholm, C. Sharpe, L. Sibley, H. Stephenson

Chris Murphy raised the question of how the minutes are done. Minutes are supposed to be a list of things that were actually done. Discussion should not be part of the minutes.

Chris Murphy moved, and it was duly seconded, that the Commission change the format of the minutes for a six-month trial period to include only the following and that the minutes for each meeting be brought up for approval as the first item on the agenda at the following meeting and that this procedure only be altered by a majority vote. Minutes to include:

- ***Date and time and place of meeting.***
- ***Name of the presiding officer.***
- ***Record of the action taken on the minutes of the previous meeting.***
- ***The exact wording of each main motion as it was voted on, whether it passed or failed, the name of the person who made the motion. If the vote was tallied, the count should be included and, if a roll call, the record of each person's vote should be included.***
- ***Any notice given at the meeting.***
- ***Previous notice sometimes required as with amendments to the by-law.***
- ***Points of order and appeals.***
- ***For committee reports, the name of the committee, and who spoke for it. Printed committee reports should be attached to the minutes.***

- ***For public hearings, the hearing officer, the time the hearing opened and closed, the subject of the hearing, whether the hearing was closed or continued and, if so, when. All offers made by the applicant by the hearing.***

Commissioners discussed the motion.

- **John Breckenridge** said the information is provided to become part of the written record and as a reference.
- **Chris Murphy** said there are at least two sets of electronic recordings. A detailed record should be in a staff report.
- **Linda Sibley** said perhaps two documents need to be produced: one set of minutes and one set of notes. The Commission has the habit of keeping detailed minutes. Perhaps there could be action minutes and a document that records everything the applicant proposes.
- **Chris Murphy** said the minutes process has never worked in a timely manner except for a short time. The process is flawed and a way to fix it is to make it simpler.
- **Kathy Newman** added that if a court reference is needed, the electronic recordings are available.
- **Mark London** said that when he first started at the Commission, the minutes were almost verbatim. Staff, Commissioners, and Counsel extensively discussed what would be most useful and came up with the current format, which includes a summary of the testimony and discussions.
- **Linda Sibley** said she wants notes about the public hearings so she can review what the applicant said and what the testimony was.

A hand vote was taken. In favor: 6. Opposed: 7. Abstentions: 1. The motion did not pass.

Jim Powell moved, and it was duly seconded, that Commissioners return to the issue at the March 5th meeting. Commissioners agreed by consensus.

Meeting adjourned at 10:00 p.m.

Chairman

Date

Clerk-Treasurer

Date